

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Aliza Klingenstein	Team: Squad #7	CCRB Case #: 202103843	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/26/2021 10:30 AM	Location of Incident: In front of 2087 Jerome Avenue	Precinct: 46	18 Mo. SOL 12/26/2022	EO SOL 12/26/2022	
Date/Time CV Reported Sat, 06/26/2021 12:17 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 06/26/2021 12:17 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Gonzalez	19371	959666	046 PCT
2. POM Nefi Navarro	26787	965364	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Shawndra Smith	03638	937564	046 PCT
2. POF Fatime Osmanovic	15801	957925	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Gonzalez	Abuse: Police Officer Jose Gonzalez interfered with § 87(2)(b)'s use of a recording device.	
B.POM Jose Gonzalez	Discourtesy: Police Officer Jose Gonzalez spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On June 26, 2021, § 87(2)(b) filed this complaint via the CCRB Call Processing System.

On June 26, 2021, at approximately 10:30 a.m. in front of 2087 Jerome Avenue in the Bronx, Police Officer Jose Gonzalez and Police Officer Nefi Navarro, both of the 46th Precinct, arrived at Dollar Junction to investigate an alleged robbery. § 87(2)(b) the store owner, met the officers outside and attempted to explain what happened. PO Gonzalez instructed § 87(2)(b) to stop recording on his cellphone, and § 87(2)(b) put his phone away (**Allegation A: Abuse of Authority**, § 87(2)(g)). The suspect claimed he had attempted to steal five dollars' worth of items, and PO Gonzalez allegedly asked § 87(2)(b) "Only fucking five dollars?" (**Allegation B: Discourtesy**, § 87(2)(g)). § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

Two BWC videos (**Board Review 01 and 02**) and one cellphone video recording (**Board Review 03**) were used to analyze the allegations.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jose Gonzalez interfered with § 87(2)(b)'s use of a recording device.

Allegation (B) Discourtesy: Police Officer Jose Gonzalez spoke discourteously to § 87(2)(b)
§ 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) testified that when PO Gonzalez and PO Navarro arrived outside § 87(2)(b) he pointed out the suspect and tried to tell the officers his account of the robbery (**Board Review 04**). The suspect stated that he only took five dollars' worth of items, which caused the officers to not listen to § 87(2)(b)'s side of the story. § 87(2)(b) took out his cellphone and believed he began a recording, but later realized he had pressed the wrong button. § 87(2)(b) held his phone towards the officers and PO Gonzalez stated, "No recording," so § 87(2)(b) returned his phone to its case. PO Gonzalez asked § 87(2)(b) "Only fucking five dollars?" and instructed him to enter the store to show surveillance footage of the robbery. After hearing PO Gonzalez's question, § 87(2)(b) took out his phone again and began a new recording while he entered the store. Because PO Gonzalez had not allowed § 87(2)(b) to record the first time, § 87(2)(b) attempted to hide his phone during the second recording so that PO Gonzalez would not notice. Inside the store, § 87(2)(b) stated, "Not only fucking five dollars," but by the time § 87(2)(b) began the second recording, it was too late to have captured PO Gonzalez's statement.

In PO Gonzalez's BWC at minute mark 00:54, § 87(2)(b) retrieves his cellphone from a holder attached to his waistband and appears to begin recording (**Board Review 01**). At 01:05, § 87(2)(b) holds his phone outstretched in front of him and walks toward PO Navarro and the suspect, who stand approximately one and a half car lengths away. At 01:08, PO Gonzalez states to § 87(2)(b) "Slow down for a minute. Talk to me, hold on. Calm down, put the camera off." At 01:13 § 87(2)(b) responds, "No, I have to..." and PO Gonzalez states, "I get it. We're here already. What happened?" § 87(2)(b) states that the suspect stole from his store, and the suspect states that § 87(2)(b) hit his face with a metal bar prior to the officers' arrival. At 01:46, PO Gonzalez states, "Wait a minute, hold on." PO Gonzalez then walks to his vehicle and deactivates his BWC. PO

Gonzalez's BWC remains deactivated until Sergeant Shawndra Smith of the 46th Precinct arrives on scene, approximately one minute later.

In PO Navarro's BWC at minute mark 02:14, § 87(2)(b) appears to be recording on his phone when the suspect tells PO Gonzalez that § 87(2)(b) hit him with a metal bar (**Board Review 02**). PO Gonzalez walks toward the officers' vehicle and PO Navarro states at 02:20, "Alright, we're gonna go look at the cameras," before deactivating his BWC.

In the cellphone recording § 87(2)(b) provided to the investigation, the video displays the sidewalk as § 87(2)(b) walks into § 87(2)(b) amid loud background noise (**Board Review 03**). At minute mark 00:07, PO Gonzalez is faintly heard stating, "Five dollars, right?" At 00:09, § 87(2)(b) yells in response, "No not fucking five dollars!" § 87(2)(b) and PO Gonzalez enter § 87(2)(b) and PO Gonzalez instructs § 87(2)(b) to show surveillance footage of the robbery.

PO Gonzalez testified that when he and PO Navarro arrived on scene, PO Navarro stopped the suspect so that he was not free to leave, but the officers needed to establish probable cause to arrest the suspect and they did not want to keep the suspect stopped an unreasonable amount of time (**Board Review 05**). § 87(2)(b) yelled and extended his arms, but his conduct never rose to the level of a violation. PO Gonzalez instructed § 87(2)(b) to enter the store and show surveillance footage of the robbery, but § 87(2)(b) ignored this instruction and moved closer to the suspect while recording on his cellphone. PO Gonzalez believed § 87(2)(b) was impeding the officers' investigation and he feared that the suspect could become irritated with § 87(2)(b) and lunge at him. PO Gonzalez told § 87(2)(b) that he could "stop recording" to try to continue the investigation and remind § 87(2)(b) that the officers needed to obtain more evidence before taking action with the suspect. PO Gonzalez stated he did not learn the value or approximate value of the stolen items until the end of the incident when § 87(2)(b) completed a stolen property form and listed each item by price. PO Gonzalez did not recall commenting on the value of the stolen items or stating that the items were worth "only fucking five dollars" at any point during the incident. After watching § 87(2)(b)'s cellphone recording, PO Gonzalez stated that he did not recall hearing § 87(2)(b) state, "Not fucking five dollars" during the incident and did not know why § 87(2)(b) would have made this statement.

PO Navarro testified that when he was with § 87(2)(b) inside § 87(2)(b) § 87(2)(b) stated that he did not like the way PO Gonzalez had spoken to him (**Board Review 06**). PO Navarro did not know what PO Gonzalez said to make § 87(2)(b) feel that way. PO Navarro did not recall hearing PO Gonzalez state that the stolen items were worth "only fucking five dollars," or anything else regarding the value of the items at any point during the incident. After PO Gonzalez watched his BWC footage from the incident, he did not recall why he deactivated his BWC at the time he did. PO Gonzalez reactivated his BWC inside § 87(2)(b) because he assumed § 87(2)(b) was getting ready to show surveillance footage of the robbery, and he wanted to record the footage. PO Navarro deactivated and reactivated his BWC several times throughout the incident upon learning new information about what had transpired prior to his arrival on scene. Early in the incident, PO Navarro deactivated his BWC when he believed the incident was only a dispute between § 87(2)(b) and the suspect.

NYPD Administrative Guide Procedure 304-21 prohibits members of service from attempting to prevent individuals from recording police activity unless the act of recording poses a safety risk or the individual who is recording violates the law (**Board Review 07**). Patrol Guide Procedure 212-123 instructs members of service to activate BWC prior to engaging in potential crime-in-progress assignments and continue recording until all investigative, enforcement, or other police activity has been concluded (**Board Review 08**).

PO Gonzalez acknowledged that he instructed § 87(2)(b) to put away his recording device during the incident. When PO Gonzalez gave this instruction, § 87(2)(b) stood approximately one and a half car lengths away from the suspect, did not pose a safety risk, and was not engaged in unlawful activity. While it is believable PO Gonzalez made this statement in an attempt to advance the investigation, it had the effect of intimidating § 87(2)(b) which caused § 87(2)(b) to momentarily put his phone away. Because of this, § 87(2)(b) attempted to hide his camera when making a second

recording, and the low sound quality of the video does not capture the moment at which the alleged discourtesy occurred. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 09**).
- PO Navarro has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Gonzalez has been a member of service for six years and has been a subject in two other CCRB complaints involving five allegations, none of which were substantiated.
 - Complaint 202002767 involved one allegation of A: Threat of force (unfounded), and three allegations of Discourtesy: Word (two unfounded, one unsubstantiated). The recommended dispositions are still pending Board review.

Civil and Criminal Histories

- As of September 28, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 10**).
- § 87(2)(b)

Squad: 7

Investigator:	Inv. Klingenstein Signature	Inv. Aliza Klingenstein Print Title & Name	November 03, 2021 Date
Squad Leader:	Signature	Manager Vanessa Rosen Print Title & Name	November 4, 2021 Date
Reviewer:	Signature	Print Title & Name	Date